

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIA TARESLI ORTEGA,
Plaintiff,
v.
KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

Case No. 1:22-cv-01058-HBK
ORDER GRANTING AWARD AND
PAYMENT OF ATTORNEYS FEES UNDER
THE EQUAL ACCESS TO JUSTICE ACT
AND MOOTING EARLIER FILED MOTION¹
(Doc. Nos. 16, 17)

Pending before the Court is the parties' corrected² stipulated motion for attorney fees filed on March 22, 2023. (Doc. No. 17). The parties agree to an award of attorney's fees and expenses to Plaintiff's attorney, Andrew K. Shaffer of Borah & Shaffer, in the amount of \$2,638.99 pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, and costs in the amount of \$402.00 under 28 U.S.C. § 1920. (*Id.*).

On February 16, 2023, this Court granted the parties' Stipulated Motion for Voluntary Remand and remanded the case pursuant to sentence four of 42 U.S.C. § 405(g) to the Commissioner for further administrative proceedings. (Doc. No. 14). Judgment was entered the

¹ Both parties have consented to the jurisdiction of a magistrate judge in accordance with 28 U.S.C. §636(c)(1). (Doc. No. 8).

² The same day an earlier motion was filed with an incorrect case number. (Doc. No. 16). The later filed motion moots the earlier motion.

1 same day. (Doc. No. 15). Plaintiff now requests an award of fees as the prevailing party. *See* 28
2 U.S.C. § 2412(a) & (d)(1)(A); Fed. R. Civ. P. 54(d)(1); *see* 28 U.S.C. § 1920; *cf. Shalala v.*
3 *Schaefer*, 509 U.S. 292, 300-02 (1993) (concluding that a party who wins a sentence-four remand
4 order under 42 U.S.C. § 405(g) is a prevailing party). The Commissioner does not oppose the
5 requested relief. (Doc. No. 16).

6 The EAJA provides for an award of attorney fees to private litigants who both prevail in
7 civil actions (other than tort) against the United States and timely file a petition for fees. 28
8 U.S.C. § 2412(d)(1)(A). Under the Act, a court shall award attorney fees to the prevailing party
9 unless it finds the government's position was "substantially justified or that special circumstances
10 make such an award unjust." *Id.* Here, the government did not show its position was
11 substantially justified and the Court finds there are not special circumstances that would make an
12 award unjust. Based on the stipulation, the Court finds an award of \$2,638.99 in attorney fees
13 and expenses, and \$402.00 in costs, is appropriate. EAJA fees, expenses, and costs are subject to
14 any offsets allowed under the Treasury Offset Program ("TOP"), as discussed in *Astrue v. Ratliff*,
15 532 U.S. 1192 (2010). If the Commissioner determines upon effectuation of this Order that
16 Plaintiff's EAJA fees are not subject to any offset allowed under the TOP, the fees shall be
17 delivered or otherwise transmitted to Plaintiff's counsel.

18 Accordingly, it is **ORDERED**:

19 1. The parties' stipulated motion for attorney fees and costs (Doc. No. 17) is **GRANTED**
20 which moots the earlier filed motion (Doc. No. 16).

21 2. The Commissioner is directed to pay to Plaintiff as the prevailing party EAJA fees in
22 the amount of \$ \$2,638.99 in attorney fees and \$ 402.00 in costs. Unless the Department of
23 Treasury determines that Plaintiff owes a federal debt, the government shall make payment of the
24 fees to Plaintiff's counsel, Andrew K. Shaffer of Borah & Shaffer, in accordance with Plaintiff's
25 assignment of fees and subject to the terms of the stipulated motion.

26 Dated: March 23, 2023


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE